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USDC SDNY
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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 UNITED STATES OF AMERICA ex rel. :
 SHARON SHADIC, :

Plaintiff, :

v. :

UFC AEROSPACE, UNITED FASTENER :
 CO., INC. and DOUGLAS B. DAVIS, :

Defendants. :

12 Civ. 2594 (WHP)

STIPULATION AND ORDER OF
 SETTLEMENT AND DISMISSAL

-----X
 UNITED STATES OF AMERICA, :
 Plaintiff, :

v. :

UFC AEROSPACE LLC and :
 DOUGLAS B. DAVIS, :

Defendants. :
 -----X

WHEREAS, this Stipulation and Order of Settlement and Dismissal (the "Stipulation" or "Agreement") is entered into among the United States of America ("United States"), by its attorney Preet Bharara, United States Attorney for the Southern District of New York, and on

behalf of the United States Small Business Administration (“SBA”) and the United States Department of Defense (“DOD”); UFC Aerospace LLC, formerly known as United Fastener Co., Inc. and, thereafter, UFC Aerospace Corp. (“UFC”) and Douglas B. Davis (“Davis,” and together with UFC, the “Defendants”); and Relator Sharon Shadic (“Relator”) (together with the United States and the Defendants, the “Parties”), through their authorized representatives;

WHEREAS, as of 2001, Davis was an owner of UFC Aerospace Corp., a New York corporation engaged in the business of distributing consumable materials to the aerospace and defense industries, and the successor-in-interest to United Fastener Co., Inc., a New York corporation, and the predecessor-in-interest to UFC Aerospace LLC, a Delaware limited liability company;

WHEREAS, on January 30, 2012, B/E Aerospace, Inc. (“B/E Aerospace”) acquired all of the shares of UFC Aerospace Corp., and UFC Aerospace Corp. thereby became a wholly-owned subsidiary of B/E Aerospace;

WHEREAS, on April 25, 2012, UFC Aerospace Corp. was converted from a New York corporation into a Delaware limited liability company known as “UFC Aerospace LLC”;

WHEREAS, from April 25, 2012 until December 16, 2014, UFC Aerospace LLC was a wholly-owned subsidiary of B/E Aerospace;

WHEREAS, on July 31, 2014, B/E Aerospace formed KLX Inc. (“KLX”), which existed as its wholly-owned subsidiary until December 16, 2014;

WHEREAS, on December 16, 2014, B/E Aerospace transferred to KLX the outstanding membership interests of UFC Aerospace LLC, and UFC Aerospace LLC thereby became a wholly-owned subsidiary of KLX;

WHEREAS, on December 16, 2014, following the payment of a dividend on its outstanding shares, KLX became a publicly-traded, stand-alone legal entity, separate and distinct from B/E Aerospace;

WHEREAS, on April 4, 2012, Relator filed a *qui tam* action in the United States District Court for the Southern District of New York, captioned *United States ex rel. Sharon Shadic v. UFC Aerospace, et al.*, 12 Civ. 2594 (WHP), on behalf of the United States, pursuant to the *qui tam* provisions of the False Claims Act, codified at 31 U.S.C. §§ 3729-3733. Relator's complaint alleges, among other things, that between 2000 and 2009, the Defendants knowingly obtained millions of dollars through government defense contracts by fraudulently claiming that UFC was a women-owned small business (as defined below);

WHEREAS, the United States has intervened in the Relator's action and has filed a complaint-in-intervention, as amended, against Defendants under the False Claims Act and common law arising from Defendants' alleged violation of statutory provisions designed to ensure the participation of women-owned small businesses ("WOSBs") in certain historically underrepresented industries;

WHEREAS, these statutory provisions are intended to provide opportunities for businesses owned by women, in the context of contracts funded by the federal government;

WHEREAS, as set forth in the amended complaint-in-intervention, the United States asserts claims against the Defendants under the False Claims Act, codified at 31 U.S.C. §§ 3729-3733, and the common law for engaging in the following conduct (collectively the "Covered Conduct"):

At various times between 2001 and 2011 inclusive, Defendants engaged in conduct designed to take advantage of UFC's purported WOSB status in order to secure contracts on large-scale aerospace and defense projects that UFC knew were funded by the Government by certifying that it was a WOSB when Defendants knew, were deliberately ignorant, or acted with reckless disregard with regard to the fact that UFC never met the requirements of WOSB status set forth in 15 U.S.C. § 632(n) during the entire relevant time period.

Defendants certified that UFC was a WOSB when they knew, were deliberately ignorant, or acted with reckless disregard with regard to the fact that UFC was not a WOSB and knowingly presented and/or caused to be presented false or fraudulent claims for payment for the work it obtained from contracts that UFC entered into with government contractors or directly with agencies of the United States at various times between 2001 and 2011 inclusive;

WHEREAS, the United States seeks to recover damages and civil penalties from Defendants under the False Claims Act, 31 U.S.C. §§ 3729-33, and common law;

WHEREAS, Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of the Settlement Amount and to Relator's reasonable expenses, attorneys' fees and costs; and

WHEREAS, the Parties desire to reach a full and final settlement and compromise of the claims that the United States asserts against Defendants by entering into this Stipulation;

NOW, THEREFORE, it is hereby ORDERED as follows:

TERMS AND CONDITIONS

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1331.
2. The Parties consent to this Court's exercise of personal jurisdiction over each of them.

3. A consent judgment (the “Judgment”), in the form of Exhibit A to this Stipulation, shall be entered against UFC and Davis and in favor of the Government in the amount of \$20,015,956.92 (the “Settlement Amount”).

4. Defendant Douglas Davis admits, acknowledges, and accepts responsibility for the following:

- a. At various times between 2001 and 2011 inclusive (the “relevant period”),
 - (1) Davis was the President of UFC and controlled the management and business operations of UFC, and (2) UFC certified that it was a WOSB to contractors that UFC knew were conducting millions of dollars of business with the United States in order to obtain a competitive advantage with these contractors.
- b. At no time during the relevant period did UFC actually meet either of the statutory requirements for claiming WOSB status that were in place for the entire relevant time period, namely that “(1) at least 51 percent of [the] small business concern is owned by one or more women or, in the case of any publicly owned business, at least 51 percent of the stock [] is owned by one or more women; and (2) the management and daily business operations of the business are controlled by one or more women.” 15 U.S.C. § 632(n).

5. Defendant UFC admits, acknowledges, and accepts responsibility for the fact that at various times between the years 2001 and 2011 inclusive, UFC certified that it was a WOSB to contractors that were conducting millions of dollars of business with the United States in order to obtain a competitive advantage with these contractors. However, at no time did UFC actually meet either of the statutory requirements for claiming WOSB status that were in place for the entire relevant time period, as set forth in 15 U.S.C. § 632(n).

6. Within 15 days of the Effective Date (defined below), Defendants shall pay to the United States the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Southern District of New York.

7. Subject to the exceptions in Paragraph 8 (concerning excluded claims) below, and conditioned upon Defendants' compliance with the terms of this Stipulation, including full payment of the Settlement Amount, and subject to Paragraph 16 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date or any payment made under this Stipulation), the United States releases Defendants, and all of UFC's current and former officers, directors, employees, agents, and affiliates, and the parents, successors and assigns of each of them (collectively, the "Released Parties"), from any civil or administrative monetary claim the United States has or may have for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law.

8. Notwithstanding any term of this Stipulation, including the releases provided in paragraph 7, any and all of the following are specifically reserved and excluded from the scope and terms of this Stipulation:

- a. Any civil, criminal or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as expressly stated in this Stipulation, any administrative liability, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;

- e. Any liability based upon such obligations as are created by this Stipulation; and
- f. Any liability to the United States of any person or entity, including but not limited to any joint tortfeasor who or that is not released by the terms of this Stipulation.

9. The Defendants shall be in default of this Stipulation if they fail to make the payment set forth in paragraph 6. The United States will provide written notice of the default, to be sent by overnight delivery to the undersigned attorneys for the Defendants. In the event of default, the Settlement Amount shall be immediately due and payable, and interest shall accrue at the rate of 7% per annum compounded daily on the remaining unpaid principal balance, beginning seven (7) business days after delivery of the notice of default. If the Settlement Amount, with all accrued interest, is not paid in full within seven (7) business days after delivery of the notice of default, the United States may, at its option: (a) seek specific performance of the Stipulation; (b) offset the remaining unpaid balance of the Settlement Amount from any amounts due and owing the Defendants by any department, agency or agent of the United States at the time of default; (c) reinstate this lawsuit; or (d) exercise any other rights granted by law, or under the terms of this Stipulation, or recognizable at common law or in equity. The Defendants shall not contest any offset imposed or any collection action undertaken by the United States pursuant to this paragraph, either administratively or in any State or Federal court. In addition, the Defendants shall pay the United States all reasonable costs of collection and enforcement under this paragraph, including attorney's fees and expenses. In the event that the United States opts to rescind this Stipulation pursuant to this paragraph, the Defendants shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or

similar theories, to any civil or administrative claims which relate to the Covered Conduct, except to the extent those defenses were available on the date of the filing of the amended complaint-in-intervention in this action.

10. Relator and her heirs, successors, attorneys, agents and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

11. The Defendants waive and will not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the United States Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the United States Constitution, this Stipulation bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of the Stipulation constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Code, Title 26 of the United States Code or New York State Tax Law.

12. The Defendants fully and finally release the United States, its agencies, departments, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which the Defendants have asserted, could have asserted, or may assert in the future against the United States, its agencies, departments, employees, servants, and agents related to the Covered Conduct, and the United States' investigation and prosecution thereof, and this Stipulation.

13. Defendants agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Defendants, and UFC's present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit and investigation of the matters covered by this Agreement;
- (3) Defendants' investigation, defense, and corrective actions undertaken in response to the United States' audit and investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement; and
- (5) the payment Defendants make to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Defendants, and Defendants shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Defendants shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Defendants or any of UFC's subsidiaries or affiliates from the

United States. The Defendants agree that the United States, at a minimum, shall be entitled to recoup from Defendants any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine UFC's books and records and to disagree with any calculations submitted by Defendants or any of UFC's subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Defendants, or the effect of any such Unallowable Costs on the amount of such payments.

14. This Stipulation is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except as provided in this Stipulation. Until the Settlement Amount is fully satisfied, the Defendants shall maintain custody of, or make arrangements to have maintained, all documents and records of the Defendants related to the Covered Conduct.

15. The Defendants expressly warrant that they have reviewed their financial situation and that they currently are solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will not become insolvent following their payments of the Settlement Amount. Further, the Parties expressly warrant that, in evaluating whether to execute this Stipulation, such Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to the Defendants, within the meaning of 11 U.S.C. § 547(c)(1); and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonable equivalent exchange of value which is not intended to

hinder, delay or defraud any entity to which the Defendants were or became indebted on or after the Effective Date of this Stipulation, all within the meaning of 11 U.S.C. § 548(a)(1).

16. If, within 91 days of the effective date of this Stipulation or within 91 days of any payment under this Stipulation, the Defendants commence, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization or relief of debtors: (i) seeking to have any order for relief of the Defendants' debts; (ii) seeking to adjudicate the Defendants as bankrupt or insolvent; or (iii) seeking appointment of a receiver, trustee, custodian or other similar official for Defendants or for all or any substantial part of their assets, then:

a. Defendants' obligations under this Stipulation shall not be avoided pursuant to 11 U.S.C. § 547, and the Defendants shall not argue or otherwise take the position in any such case, proceeding or other action that: (i) the Defendants' obligations under this Stipulation may be avoided under 11 U.S.C. § 547; (ii) the Defendants were insolvent at the time this Stipulation was entered into, or became insolvent as a result of the payments made to the United States hereunder; or (iii) the mutual promises, covenants and obligations set forth in this Stipulation do not constitute a contemporaneous exchange for new value given to the Defendants.

b. In the event that the Defendants' obligations hereunder are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind its agreement to this Stipulation, and bring any civil and/or administrative claim, action or proceeding against the Defendants for the claims that would otherwise be covered by the release provided in paragraph 7 above.

The Defendants: (i) shall not contend that any such claims, actions or proceedings brought by the United States are subject to an automatic stay pursuant to 11 U.S.C. § 362(a) as a result of the action, case or proceeding described in the first clause of this paragraph; (ii) the Defendants shall not plead, argue or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any such civil or administrative claims, actions or proceedings which are brought by the United States within thirty (30) calendar days of written notification to the Defendants that the releases herein have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the date the complaint was filed in this action; and (iii) the Defendants shall not contest the validity of a claim filed by the United States against the Defendants in the amount of \$20,015,956.92, and the United States may pursue its claims in the case, action or proceeding referenced in the first clause of this paragraph, as well as any other case, action, or proceeding.

c. The Defendants' agreements in this paragraph are provided in exchange for valuable consideration provided in this Stipulation.

17. Except as expressly provided to the contrary in this Stipulation, the United States, the Relator and Defendants shall each bear their own legal and other costs incurred in connection with this matter, including the preparation and performance of this Stipulation.

18. Subject to Defendants' full compliance with the terms of this Stipulation, Relator, for herself and for her heirs, successors, and assigns, releases the Released Parties from any and all claims Relator has asserted, or could have asserted, or may assert in the future for the conduct alleged in the Relator's complaint, including without limitation any claims that Relator has on

behalf of the United States for the conduct alleged in the Relator's complaint and expenses, attorneys' fees and costs from Defendants, pursuant to 31 U.S.C. § 3730(d).

19. This Stipulation is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute relating to this Stipulation is the United States District Court for the Southern District of New York. The Parties waive any objection that any of them may now have or hereafter may have to this venue, whether concerning this Stipulation or for any related suit, action or proceeding, and consent to the jurisdiction of this Court and agree to accept and acknowledge service in any such suit, action or proceeding.

20. For purposes of construction, this Stipulation shall be deemed to have been drafted by all Parties to this Stipulation and shall not, therefore, be construed against any party for that reason in any subsequent dispute.

21. Any failure by any party to this Agreement to insist upon the strict performance of any of the provisions of this Stipulation shall not be deemed a waiver of any of the provisions hereof, and that party, notwithstanding that failure, shall have the right thereafter to insist upon strict performance of any and all of the provisions of this Stipulation.

22. If any part of this Stipulation shall for any reason be found or held invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the remainder of this Stipulation, which shall survive and be construed as if such invalid unenforceable part had not been contained herein.

23. This Stipulation constitutes the complete agreement between the Parties. This Stipulation may not be amended, changed, modified or waived except in writing signed by all Parties or their authorized representatives.

24. The undersigned counsel represent and warrant that they are fully authorized to

execute this Stipulation on behalf of the persons and entities indicated below.

25. This Stipulation may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Stipulation.

26. This Stipulation is binding on the Defendants' successors, transferees, heirs, and assigns.

27. The amended Complaint is hereby dismissed, without prejudice to reinstatement in accordance with Paragraph 9 of this Stipulation.

28. Any notices pursuant to this Stipulation shall be in writing and shall, unless expressly provided otherwise herein, be given by hand delivery, express courier, or facsimile transmission followed by postage prepaid mail, and shall be addressed as follows:

IF TO THE UNITED STATES:

Ellen London
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IF TO DEFENDANT UFC:

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IF TO DEFENDANT DOUGLAS B. DAVIS:

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IF TO RELATOR:

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29. The effective date of this Stipulation is the date upon which this Stipulation is entered by this Court (the "Effective Date").

30. The Defendants represent that this Stipulation and Order is freely and voluntarily entered into without any degree of duress or compulsion whatsoever and upon due deliberation with the advice of counsel.

Dated: New York, New York

Oct. 6, 2015

SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J.


10/8/15

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Attorney for Plaintiff

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Dated: New York, New York

October 6, 2015

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Dated: New York, New York

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Dated: New York, New York
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Melville
Dated: ~~New York~~, New York
October - 6, 2015

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Dated: Dallas, Texas
Oct. 6, 2015

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SO ORDERED:

UNITED STATES DISTRICT COURT JUDGE

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